

will come and talk about that this morning.

I just read a quote from Senator COLLINS, but she is not alone in urging the Republican leader to follow regular order. Other sitting Senators are saying the same thing. I will not read what all of them say, but there is a small nucleus of Republican Senators who believe strongly that what Senator MCCONNELL is doing is wrong.

The Republican Senator from Indiana, Senator COATS, was quoted in one interview as saying:

If the President nominates someone, which is his choice, I think that person would deserve a hearing if that person is not someone that is just obviously nominated for political purposes.

Even the Republican leader's former colleagues agree that the President's nominee deserves a fair shake. The former Senator from Indiana, Dick Lugar, is urging Senate Republicans to do the right thing and honor their constitutional duty. He served here for more than three decades. Here is what he said yesterday:

I can't understand their reluctance given the controversy that surrounds all of the debate that has already occurred. But that is not sufficient reason to forgo your duty.

But perhaps the former Republican Senator from Maine, Olympia Snowe, said it best:

I believe that the process should go forward and be given a good-faith effort.

"A good-faith effort"—it is a phrase we hear often, but it is absolutely crucial to American democracy. Our Constitution is constructed with the expectation that elected leaders would act in good faith. That is how our government operates. It should. Under the Republican obstruction, that has not been the case.

I ask my Republican colleagues, whose side do you want to be on? Whose voice are you listening to? These voices of moderation and reason coming from within your own party or the shrill voices—the shrill, shrill voices—of Trump and CRUZ? There isn't time to vacillate. Right now, before our eyes, the Republican leader is leading this conference straight to the side of Donald Trump and TED CRUZ.

It is not too late to change course. Reject the extremist approach being propagated by the likes of Donald Trump and TED CRUZ. It will only hurt our country. Put aside this unprecedented obstruction and work with President Obama to fill this crucial vacancy on the Supreme Court. Do your job. All we are saying is: Do your job. Do your job. Do your job.

Will the Chair announce the schedule for the rest of the day.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session to consider the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Robert McKinnon Califf, of South Carolina, to be Commissioner of Food and Drugs, Department of Health and Human Services.

The PRESIDING OFFICER. The Senator from Oklahoma.

NOMINATION OF MICHAEL MISSAL

Mr. INHOFE. Mr. President, it is quite a discussion when we talk about confirmations, one of the responsibilities this body has that the other body does not have. In the case of a U.S. Supreme Court vacancy, however, during an election year, I think it has actually been some 80 years since they have actually filled a vacancy as opposed to waiting until after the next election.

I am concerned today, though, about another confirmation. VA IG nominee Michael Missal has been nominated, and I have a hold. To explain what that means, when you have a hold, that doesn't necessarily mean you don't approve of the nominee, but it does mean there is one reason or another you don't want to go ahead and confirm that person. That happened in the case of the nominee to be a VA inspector general, Michael Missal. Actually, I am not placing a hold on him because of deficiencies in him but deficiencies in the Office of the Inspector General. Today what I am announcing is that I am lifting that hold. That means they are free to go ahead and have this nominee go forward, and I think that is the right thing to do.

At the Muskogee VA facility alone, the IG office has conducted nine investigations since 2009, and there has been little or no change in the quality of care. Right now, my office is working hundreds of cases of Oklahoma veterans facing inadequate care or blocked access to benefits. I wrote the VA IG in January of 2016 simply requesting that the VA IG—inspector general—visit Oklahoma facilities and to do so with an outside entity such as a joint commission. There is an attitude sometimes with individuals not wanting outside help, a kind of assumption that "I don't need their help." Their response letter denied my request to conduct an investigation with a third party. It is time for our VA facilities in Oklahoma to be held to those same standards as private hospitals, and I believe it would take the aid of an outside group to make this happen because right now they are not meeting that quality.

Since placing a hold on Mr. Missal, the IG office has committed to investigating Oklahoma's VA facilities with the oversight of an outside entity, and I have also had commitment from Mi-

chael Missal that he will do that. I appreciate their commitment, but our work to improve the care for Oklahoma veterans doesn't end there.

Since the VA reform bill passed Congress this last summer—and it was a good bill—it is clear our facilities in Oklahoma have continued business as usual. I haven't seen any noticeable difference in the performance and treatment of our veterans since the passage and activation of that bill. I believe the impending investigations will show it is going to require a change in the management level to bring about lasting improvements for veterans care.

That is why I, along with my junior Senator from Oklahoma JAMES LANKFORD, introduced S. 2554, the Department of Veterans Affairs Accountability Act, on February 12. This legislation is critical to providing the best treatment for our country's veterans. Building upon the comprehensive plan of the 2014 VA reform bill, our legislation grants VA leadership at the regional level the authority to fire and demote staff working in these facilities. I think a lot of them thought the reform bill did that, but it didn't. We haven't been able to do it. It also allows directors of veterans regional chapters to contract with an outside entity to conduct investigations of their VA medical facilities. As I have worked to address the many concerns I have with Oklahoma's VA facilities, I have come to trust the leadership at the regional level. One individual who has come in is Ralph Gigliotti. He has done a great job. He doesn't have the authority to do what this bill would allow him to do. Not only were intermediate surgeries suspended due to what they have now uncovered, but also the chief of staff has been temporarily removed from his position.

However, this process revealed that regional directors are not presently empowered to address staffing concerns in the facilities they oversee. We have seen this in the State of Oklahoma numerous times. Our legislation peels away the layers of bureaucracy and allows the directors and each of the regional areas to play a larger role with improving the VA system as a whole.

As we all know, freedom isn't free. Many of our veterans have paid the prices with scars, some visible and some may go unseen such as post-traumatic stress disorder—PTSD—depression, and traumatic brain injuries. In my great State of Oklahoma, there are more than 37,000 military families and roughly 340,000 veterans that call our State home, attend our churches, and contribute to our communities. On behalf of Oklahoma, I say we are humbled by the immeasurable dedication of each and every one of them. I think it is the government's duty to honor the promises made to our veterans in return for their sacrifice. I urge our colleagues to remember that.

I can remember when I was in the Army, commitments were made to me

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

when a decision was made—actually, mine was not a decision because it was compulsory service at that time, which I think we ought to go back to. Anyway, I think this is going to be good, and this is going to give us the resources and the capability of correcting the problems as we see them. For that reason, I am lifting my hold on Mr. Michael Missal and his nomination will move forward.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

FILLING THE SUPREME COURT VACANCY

Mr. LEAHY. Mr. President, this past weekend the Nation honored Justice Antonin Scalia, who was laid to rest after serving on the Supreme Court for nearly three decades. Marcelle and I were home in Vermont when we learned that Justice Scalia had passed. Frankly, we were stunned by the news. I did not often agree with Justice Scalia, but he was a brilliant jurist with a deep commitment to our country and to the Constitution, and we enjoyed his friendship for decades. He will be remembered as one of the most influential Justices in modern history.

While his family and all should have had a chance to mourn his passing, I was shocked when, in the immediate wake of his death, Senate Republicans moved quickly to shut down the constitutionally mandated process to fill the vacancy left on the Supreme Court. Within hours of his death being announced, they declared they would oppose any effort to confirm the next Supreme Court Justice this year. I have served in this body longer than any Member here and I have heard some shocking things during that time, but I am surprised by the political crassness of these statements.

Before a nominee had even been named, some Republicans reflexively decided to prematurely reject anyone—anyone—nominated by the President. This impulsive rush to judgment runs completely contrary to how this body has always treated nominees—always treated nominees—to the highest Court in the land. Republicans should not allow the hyper-partisan rhetoric of the campaign trail to trump one of the Senate's most important constitutional duties.

I have talked to the President, and I know he will fulfill his constitutional duty. He will nominate an individual to bring the Supreme Court back to full strength, and of course he should. The President has already begun consulting with Members of both parties in Senate, but after a nomination has been made, we in the Senate should get to work and do our jobs—the jobs we were elected to do.

I was all over my State of Vermont last week. The Vermonters I spoke with last week reflect Americans across the country who are tired of partisan political games that are chipping away at the foundation of our constitutional democracy. I heard this from both Republicans and Democrats in Vermont.

As Oliver Goodenough, a law professor at Vermont Law School, wrote this weekend in the *Rutland Herald*, an extended Supreme Court vacancy caused by Senate inaction “would certainly create a constitutional embarrassment.”

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the *Rutland Herald*, Feb. 21, 2016]

COURT BATTLE—ANOTHER SHUTDOWN?

(By Oliver R. Goodenough)

Within hours of the announcement of Anton Scalia's death, one of our political parties was already trying to make points with the electorate about the process of picking his successor. At that evening's debate, the GOP presidential candidates advocated that the constitutional process should be suspended, either voluntarily by President Barack Obama or by purposeful inaction by the Senate.

Mitch McConnell, the Senate majority leader, was just as speedy, trying to warn Obama off from acting on the mandate of Article II, Section 2, which charges the president with nominating a replacement for Justice Scalia and the Senate with providing its advice and consent on the president's choice.

One can understand McConnell's disappointment. Appointments to the Supreme Court are for life, which means only resignation, impeachment or death will create a vacancy. In the somewhat ghoulish game of waiting for a slot on the closely divided Supreme Court to open up, the short-term expectations of mortality had been focused elsewhere—Justice Ruth Bader Ginsberg, in particular, has been a survivor of long-odds pancreatic cancer.

So Republicans were brought up short by the death of a conservative hero, whose replacement could shift the balance of the court. The accidents of history will do that sometimes.

The Constitution makes provision for what happens in such a case—in the kind of clear, unequivocal language that is the best target for Justice Scalia's vaunted originalism. The president nominates. The Senate, for its part, gives the qualifications of any nominee a serious vetting; it is not entitled to just ignore the nomination.

Some reports have argued that such a course of process sabotage would create a “constitutional crisis.” This is probably an overstatement; it would certainly create a constitutional embarrassment. With nearly a year left in Obama's term, waiting for his successor to name the new justice in 2017 would remove the ninth voice from the court not just for the current yearly term but also for most of the following term as well, since the replacement would arrive in the spring and miss months of argument and deliberation. For the better part of a year, the vacancy would sit like a broken tooth in the operations of the court. Close cases would often end up tied, with the result that the lower court finding would remain the binding result. Not itself a disaster, but a result that the constitutional provisions for naming a successor are designed to avoid.

The embarrassment of sabotage on judicial appointments actually already exists: Republicans in the Senate have effectively shut down the process of nominating new judges for the federal courts of appeal. The blockage isn't over qualifications—such considerations would be a proper exercise of the Senate's confirmation role, raised in committee

and on the Senate floor. Rather, the nominations are sitting in a limbo of inaction: It is simply a matter of not doing the job at all.

This is the real crisis, a state of politics where Republicans in the House and Senate are willing to derail the processes of government to thwart the actions of President Obama, good, bad or indifferent. The most obvious example was the full shutdown of government. Limited shutdowns on matters like judicial appointments are parts of the same pattern.

Of course, obstructionism is not just a Republican failing, and it can be present in both parties to some degree in the spicy stew of politics in our robust democracy. But the bottom-line commitment of all parties should be to maintaining a functioning government, structured and administered in accordance with the framework set out in our Constitution, even when it is not working to their advantage. Why is this so hard for at least some Republicans to buy into? Why the willingness, indeed eagerness, to bring down the house we all live in?

The key is a widespread denial among Republicans of the legitimacy of the Obama presidency. This is partly related to the man himself—all the blather about his birth, his religion, etc. While many Americans find it a vindication that we can elect an African-American to our highest office, for some it is an impossibility which in turn justifies the most extreme forms of resistance. Race is our original sin as a country, and its legacy haunts us still.

Republicans are also in denial over changes in the social and economic fabric of America. We are, as always, in the process of moving from what America has been to what it will be. Conservatives have a role to play, reminding us of the valuable parts of where we came from. Progressives have a role, recognizing the imperatives of the future and charting the paths of change toward positive outcomes. Politics is the sometimes rough and tumble playing field where the dialog on this goes forward.

The intransigence of shutdowns, however, whether of the full government or a critical aspect like the nomination process, exceeds the boundaries of acceptable play and hurts us all. Obama needs to make a good faith nomination to fill the vacancy on the Supreme Court. McConnell and his colleagues in the Senate majority need to review it in good faith. That is what the Constitution provides; that is what the country needs. Get on with it.

Mr. LEAHY. We must not let that dysfunction infect the Supreme Court, an independent, coequal branch of government that was designed to be above politics. The next nominee to the Supreme Court deserves full and fair consideration by the Senate. This includes a timely hearing and then having an up-or-down vote.

I am worried that even before President Obama took office, and ever since then—even after he was reelected by a 5 million-vote plurality—there has been an unrelenting and cynical campaign by some hyper-partisans to delegitimize the President's authority. There were the birthers, and there have been and still are spurious slurs of all kinds.

Outside of this body, the efforts to undermine President Obama's constitutional authority to fill this Supreme Court vacancy draws some of their vehemence and venom from these dark corners. But every one of us took an oath of office—every one of us—and we

are sworn to uphold our constitutional duties. Let us not be intimidated and pressured to avoid our sworn duty. Let us act for the good of the American people and for the good of this great Nation.

Some have justified their call for unprecedented obstruction by claiming it is because the American people need a voice. Give me a break. The American people have spoken—millions of Americans—and an overwhelming majority of Vermonters voted in record numbers in 2008 and again in 2012 to elect President Obama. In doing so, they granted him constitutional authorities for all 8 years of those two terms. A President isn't elected for 1 year or 2 years or 3 years. A President is elected for 4 years at a time. Just saying that President Obama is a "lame duck" President does not make it true. In fact, the next election is not until November. The American people expect those they elected to do their jobs for their entire term. That means both in the Senate and in the White House. They don't expect Senators to say: Well, we can't vote on anything this year because it is an election year. We will collect our full salary, but we are not going to vote on anything. The American people don't like that.

It is rare that a vacancy in the Supreme Court arises during an election year, but it is just false to say Justices do not get confirmed in Presidential election years. More than a dozen Supreme Court Justices have been confirmed in a Presidential election year.

The Democrats led the Senate during President Reagan's final year in office, and we voted. President Reagan's nominee was confirmed by a Democratic-led Senate during the President's final year in office. He received a hearing and a confirmation vote. It would be the height of hypocrisy to say we shouldn't apply the same process with a Democrat in the White House and Republicans in control of the Senate. We can't say that we will follow our constitutional duties and do our work if we have a Democratic-controlled Senate and a Republican President but we can't do it if it is the other way around.

Some Republican Senators have acknowledged that the next Supreme Court nominee should receive a fair hearing. But the process can't end there. I have served on the Judiciary Committee for 36 years. During my time on the committee, we have never refused to send a Supreme Court nominee to the full Senate for a confirmation vote. Even in those cases where a majority of the committee had opposed the nomination, we still reported the nominee to the full Senate. Once reported to the full Senate, every Supreme Court nominee has received an up-or-down confirmation vote during my 40 years in the Senate. We have to uphold this bipartisan tradition for the next Supreme Court nominee because so much is at stake. Merely holding a hearing without full committee process

and a confirmation vote is insufficient for a Supreme Court nominee. It would be a charade, and it would be an avoidance of our constitutional duties.

If Republicans refuse to uphold their constitutional responsibility to consider the next Supreme Court nominee, I believe it will harm our constitutional system of government. If they succeed in deliberately holding open a seat on the Supreme Court for more than a year, they will be intentionally disabling the Court's ability to fulfill its constitutional role, and Republicans will be harming the Supreme Court for more than a year.

Justice Scalia once wrote that a Supreme Court of just eight Justices risked the possibility the Court "will find itself unable to resolve the significant legal issue presented by the case." The legal issues before the Supreme Court are significant, and the importance of a single vote on the Court cannot be overstated. One vote on the Supreme Court decided landmark cases concerning our campaign finance laws, clean water and air policies, marriage equality, and voting rights. Americans deserve a fully functioning Supreme Court.

I have traveled all over my State. I have traveled all over this country. I have talked to Republicans and Democrats alike. What I know about my fellow Americans that makes me so proud is that they show up for work and they do their jobs. Americans don't have the luxury of telling their bosses that instead of doing their job, they would rather delay, delay, delay. If they did, they would probably be fired. The U.S. Senate shouldn't tell the American people that we are not going to do our jobs; that we will delay, delay, delay. The stakes are too high.

The American people actually expect us to show up for work and do our job. Let's get to work, do the job the American people sent us here to do. And we may want to reread our oath to uphold the Constitution. It requires no less.

Mr. President, I don't see others on the floor about to speak. I will yield the floor when I do.

We have allowed this whole process to become far too partisan. I am a lawyer, a former prosecutor. I have argued cases in the State court, Federal courts, Federal trial courts, and Federal appellate courts. When I have gone to the Federal courts, I have always thought that the beauty of this—whether Republican or Democratic nominees—is that I could get a fair hearing. I thought it was a great honor to go there.

People come from other parts of the world, and they talk about our Federal judiciary as an example for them. I recall that when a country that had been under dictatorship changed to a more democratic form of government, some of their people came to my office and asked about our judicial system.

They said: Is it true that in the United States of America, people can actually sue their government?

I said: That is true. It happens all the time.

They said: Well, is it true that sometimes the government loses?

I said: It happens all the time.

They said: Well, do you replace the judge when that happens?

I said: No. They are independent.

It was like a lightbulb went on. They realized how different we are. Think of the image we send to the rest of the world—as well as 300 million Americans—if we say: No, we are going to politicize the Supreme Court, the Court that is supposed to be the final arbiter on constitutional questions. Look at what it says to them if we say: Yes, we have time to take more recesses this year than I think the Senate ever has, that I can ever remember, but we don't have time to do the job we were elected to do, the job we are paid to do—have a hearing on and vote on a Supreme Court nominee.

The American people have jobs. They can't pick and choose when they will bother to show up. They can't say "I know this is what I am supposed to do in this job, but I don't feel like it" or "I have a partisan reason not to do it. I am going to sit this out. See me next year, and I may do my job." Nobody would accept that. But that is really what is happening. The Republican leadership is saying "No, we want to sit this out. We don't want to do our work. We don't want to do our job. See us next year, and maybe we will then." That has never happened. It never happened during an election year. There have been at least a dozen Supreme Court vacancies during an election year, and a dozen times the Senate, no matter who was President, came together and handled the nominee and got them confirmed. Why did Senators do that in the past? Probably because they figured they had been elected, they were being paid by the American people, it was part of their job, and so they showed up and did their job.

Are we now going to change what has been the precedent ever since the beginning of this country and say "Oh, we are better than that. We don't have to do our job. Keep paying us, but we don't have to do our job even though we have taken an oath to uphold the Constitution and do our job"? Even Justice Scalia said that would be wrong, that you shouldn't have an eight-member Supreme Court. And we don't.

Let's actually show up and do the job we were elected to do, do the job we are paid to do. Let's do what every other American has to do. They have to show up for work. They have to do their jobs. They can't say "I don't feel like it this year. I will see you next year. Oh, by the way, send me my paycheck." That is not the American way; it should not be the Senate way.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I rise today first to praise and echo the words of the senior Senator from Vermont, our ranking member on Judiciary, in urging our Republican colleagues to give a fair and full consideration of a Supreme Court nominee. I particularly wish to praise my friend, the ranking member, for his eloquent remarks and for his leadership of the committee when he was chair and as ranking member.

My friend from Vermont is absolutely right. Just as the President has a constitutional responsibility to name a nominee to the Court, the Senate has a constitutional duty to provide advice and consent on that nominee. Frankly, it is the Senate's job to consider Supreme Court nominees, and the American people expect the Senate to do its job. We are telling Senate Republicans, America is telling Senate Republicans: Do your job. Plain and simple.

My friend, the chairman of the Judiciary Committee, should commit to holding hearings. The distinguished majority leader should commit to holding a vote. It has been a longstanding precedent of the Senate to consider Supreme Court nominees in a timely manner, even in election years: Justice Pitney in 1912; Brandeis and Clarke in 1916; Cardozo at a time when America was even more divided than now, 1932. In the middle of the Depression, the great election between Roosevelt and Hoover, they put in Cardozo in that last year. Murphy in 1940 and Kennedy in 1988 were confirmed. Justice Kennedy was confirmed in the last year of a Presidency with a Republican in the White House and Democrats in control of the Senate. That is the mirror image and the most recent chance we have to compare how Democrats were acting, how Republicans were acting. All of my colleagues on both sides of the aisle who were here voted that way.

I know today our Republican colleagues point to what Senator BIDEN said. They have pointed to what Chairman LEAHY said. They have pointed to what I and other Democrats have said. There are equal quotations that Senator MCCONNELL, Senator GRASSLEY, and others have said, each voicing a different view than maybe is being voiced today. But none of those were held up. You can have all the competing quotes you want; they amount to nothing. The American people are strong—Democrats and Republicans—in telling Senate Republicans: Do your job.

The bottom line is very simple. To say that there will be no hearing, no vote, no consideration whatsoever even before a nominee is named to a vacancy, that is not doing your job; that is quitting before you start. Senator LEAHY said it well. Imagine someone showing up at work. Imagine if an av-

erage American showed up at work and said: I am going to take a year off, but you still have to pay me. Your boss wouldn't stand for it. Well, our boss, the American people, will not stand for this because it will take over 300 days before a Supreme Court nominee is filled, at best.

The kind of knee-jerk political obstruction the American people have grown so frustrated with in the Congress is what our Republican colleagues are saying. If Republicans truly respect the Constitution, they should follow it and consider a nomination from the sitting President rather than playing political games. Instead, they are once again threatening to bow to the most extreme rightwing voices and engage in the kind of political obstruction that brought us a 3-week government shutdown that cost us hundreds of thousands of jobs and took \$15 to \$20 billion out of the economy.

In 2013, after the hard right didn't get its way in its fight to undo the Affordable Care Act, they waged a war to shut down the government. Republican leaders listened. They probably knew it was wrong in their heads, but they listened. What happened? After 3 weeks with their tails between their legs, the leadership had to say we have to open up the government even though we haven't repealed the Affordable Care Act. The now-junior Senator from Texas had urged that course, and they were foolhardy to follow. The junior Senator from Texas is now urging the course of having no hearings and no votes. I tell my Republican colleagues—and to his credit, Senator MCCONNELL said we have to get the Senate working again—that this is a foolhardy course, and it will not stand. It will not last because the American people are telling Senate Republicans: Do your job.

Republicans say the American people should have a voice in choosing a Supreme Court Justice. Well, guess what. President Obama won reelection by a large margin in 2012. Many of the issues they bring up now were there then, such as security and the Affordable Care Act. There was a referendum on all these kinds of things.

The people spoke loudly and clearly on November 6, 2012, when they elected the President to another 4-year term. That is 4 years, as called for in the Constitution, not 3 years, as some of my Republican friends like to say now. If Republicans get their way, we would have a 4-to-4 gridlocked Supreme Court for a year that would tie the Court and large parts of the country in knots. Let me say, if we have a tie in the Supreme Court decision, the decision has no Presidential value. You get gridlock and confusion. America doesn't want gridlock. They don't want gridlock on the floor of the Senate, they don't want gridlock on the floor of the House, and they don't want gridlock in the Supreme Court. The American people expect the Senate to do its job. They are tired of obstruction and "my way or the highway" politics.

Again I say that our friend, the junior Senator from Texas, likes to quote the Constitution. He likes to walk around carrying the Constitution. That is great. I am all for that. I would like him to show me the lines in the Constitution that say in the last year of the President's term, he doesn't have the power or the right to nominate a Supreme Court Justice. Of course he does. Yet the Republican majority—at least by its stance now—is taking away that right because they will not even have a hearing.

Some people say: Well, they will just vote no after the hearing. Maybe yes, maybe no. I believe every Member has the right to vote no if they think the nominee is out of the mainstream, and I will be the first to admit mainstream is defined differently by different people. But hearings are amazing things. If the candidate is being open and honest, hearings help us to get to know the candidate better. Whatever one thinks of hearings, the last four nominees of the Supreme Court—two under President Bush, two under President Obama—got bipartisan votes and passed.

This idea of not having a vote is wrong. For the sake of our Constitution and for the sake of getting our country moving again, I urge and plead with my colleagues on the other side to do their job. That is what the American people want, plain and simple.

It is time for the Senate to do its job. Once the President nominates someone, we need to have hearings with our Republican colleagues in a careful and thoughtful way. They don't have to rush a nominee through—no dilatory tactics—and then there should be a vote.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LANKFORD). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMEMBERING JUSTICE ANTONIN SCALIA AND FILLING THE SUPREME COURT VACANCY

Mr. DURBIN. Mr. President, on February 13 the Nation was shaken by the news that Supreme Court Justice Antonin Scalia had passed away. Justice Scalia served on the Nation's highest Court for 29 years, and he was a major figure on the American legal landscape. Justice Scalia was described by Judge Richard Posner of the Seventh Circuit as "the most influential justice of the last quarter century."

Over the years I came to know Justice Scalia. He was a man of great intellect, good humor, and he was a very social person. We certainly disagreed on many fundamental issues, but even those who disagreed with Justice Scalia on legal matters still admired him as a person.

Justice Ruth Bader Ginsburg—no ideological ally of Justice Scalia—wrote

after his death, “we were best buddies.” She described him as “a jurist of captivating brilliance and wit, with a rare talent to make even the most sober judge laugh.” Justice Ginsberg said she and Justice Scalia were “different in our interpretation of written texts,” but they were “one in our reverence for the Constitution and the institution we serve.” I have great respect for the decades Justice Scalia spent in public service. My thoughts and prayers clearly go with his family.

As surprised as I was by the news of Justice Scalia's passing, I was amazed at how quickly the Senate majority leader, Senator McConnell of Kentucky, issued a press release saying, “this vacancy should not be filled until we have a new President.” His statement came out within 90 minutes of the press report of the Justice passing. This statement clearly came at a time when most people reflected on the loss of the Supreme Court Justice, and just like that, the conversation shifted from the passing of an American legal giant to an attack on President Obama's authority to fill his vacancy on the Supreme Court.

What does the Constitution tell us about filling a vacancy on the Supreme Court? There are very few oaths a person takes in their life. As Members of the Senate, we swear each time we are reelected to a new term to uphold and defend that Constitution.

What does the Constitution say about a vacancy on the Supreme Court? If you go to article II, section 2, it is explicit and very simple. The President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court.”

The President, under the Constitution, has an express responsibility to submit to the Senate the nomination of a person who is qualified to serve on our Nation's highest Court. Then, of course, the Senate has a job to do: Give that nominee a fair hearing and a timely vote. This is our constitutional responsibility as U.S. Senators. This is what we have been elected to do. Aside from voting on a declaration of war, I believe there is no greater responsibility than voting on the confirmation of a Supreme Court nominee.

I serve on the Judiciary Committee, and it has been my privilege and honor to consider the nominations of four of the current Supreme Court Justices. There is no question that we have the time remaining to meet our constitutional responsibility in a thoughtful and careful way.

It is now February of 2016. We are almost a year away from January of 2017 when President Obama will officially leave office. The Republican leader would have us leave a seat on the Nation's highest Court vacant for at least 1 year. Not since the Civil War has the Senate taken longer than a year to fill a Supreme Court vacancy, and it certainly shouldn't happen now.

Usually it takes the Senate about 2 months to consider a Supreme Court

nominee. Senator Leahy, the ranking Democrat on the Judiciary Committee said that on average it takes about 67 days. So we have more than enough time to do this in a thoughtful and responsible way.

Even during Presidential election years, the Senate has routinely confirmed Supreme Court Justices. It has happened over a dozen times, most recently in 1988, when Justice Anthony Kennedy was confirmed by a 97-to-0 vote during President Reagan's final year in office. President Reagan—a Republican President about to leave office—submitted a name, Justice Kennedy, to the Supreme Court, and a Democratic-controlled Senate approved it with a vote of 97 to nothing. So to argue that this has never happened before is to ignore history, and even recent history.

In the past, Senate Republican leaders have said that the confirmation process should move forward with as little time as a month before an election. Consider the Presidential election of 1968. On June 13 of that year, Chief Justice Earl Warren informed the President he wanted to step down. On June 26 of the election year, Johnson nominated Associate Justice Abe Fortas to become Chief Justice and nominated George Homer Thornberry to fill his seat.

President Johnson had already announced he would not run again, but Senate Republican leaders did not call President Johnson a lame duck and question his right to put forward nominees. In fact, Senate Republican leader Everett Dirksen of my State of Illinois said on July 13 of that year, “I find that term ‘lame duck’ as applied to the President of the United States as an entirely improper and offensive term.” Republican Senator Dirksen was referring to the lame duck status of President Lyndon Johnson, a Democrat.

The Senate gave the President's nominee a prompt hearing in the Judiciary Committee. As it turned out, the hearing uncovered a range of ethics concerns about Justice Fortas, and in late September and early October, Senate Republicans filibustered his nomination. Fortas subsequently withdrew. But on October 3—same election year, just a month before the election—the New York Times reported that “Senator Dirksen said there was still time for the President to submit a new name and rush it through the Senate before the Congress adjourned.” The Republican leader said that even with a month left, we should try to fill the vacant seat. This was a month before the Presidential election. Where are the leaders like Everett Dirksen in today's Republican Party, Senators who are willing to roll up their sleeves and get down to the work of considering the nominees on their merits so the Supreme Court can do its work? We have a constitutional responsibility, as does the President.

Make no mistake—the Supreme Court needs a full complement of Jus-

tices on the bench. When the Court has an even number, as it does today, four to four, important cases are increasingly likely to end up in a tie vote. When that happens in a case, the ruling of the lower court stands and it is as if the Supreme Court never heard the case at all.

Major legal and constitutional questions are constantly brought before the Court. When the Court is frozen at an even number of Justices, many of those questions go unresolved and millions of Americans who are impacted by these questions have to wait. That is not fair to the American people. That is why historically the Senate moved to fill vacancies of the Court. That is why so many Americans are troubled by Senate Republicans' call for a 1-year hiatus in filling the Supreme Court vacancy.

Former Justice Sandra Day O'Connor said in an interview last week that she disagreed with the idea of waiting for the next President to appoint a new Justice. Justice O'Connor said, “We need somebody there now to do the job. Let's get on with it.” I agree with Justice O'Connor.

When President Obama submits a nominee, which he will do in coming days, the Senate needs to do its job, its constitutional responsibility, and give that nominee a fair hearing and timely vote. My Republican colleagues can choose to vote for or against the nominee. That is their prerogative. They should not simply duck the vote. We were not elected to this job to ignore important issues; we were elected to cast votes on important issues. This is too important an issue to simply ignore.

When it comes to giving the President's nominee a fair hearing, I certainly hope Senate Republicans don't adopt the Donald Trump position. When asked about the President's nomination, Mr. Trump, as he is wont to do, gave us a juicy quote. Here is what he said: “I think it's up to MITCH McConnell and everybody else to stop it—it's called delay, delay, delay.”

I am sure the Senate Republicans were not happy with that statement by Trump, but he did speak for a number of people who believe that is the right strategy: stop the President from using his constitutional authority; stop the Senate from accepting its constitutional responsibility. I hope my Republican colleagues don't follow Mr. Trump's lead and try to stop President Obama's nominee through endless delays. No one is going to be fooled if Senate Republicans spend weeks haggling over unreasonable document requests or swamping the nominee with endless written questions. Mr. Trump has already made it clear that “delay, delay, delay” is simply a strategy to stop the seat from being filled.

If Republicans delay in an effort to run out the clock, we will know it, and the American people will know it. The American people want us to act. They want us to accept our constitutional

responsibility. It is time for us to get down to work and do our job. The Senate can't afford to sit on its hands for 1 year and leave the Supreme Court hanging in the balance.

When President Obama names a nominee, I urge my Republican colleagues to give that person a fair hearing and timely vote.

Mr. President, I yield the floor.

The PRESIDING CHAIR. The Senator from New Hampshire.

Ms. AYOTTE. Mr. President, I come to the floor today to express my serious concerns with the FDA's actions on opioid pain relievers and my concern that they have not sufficiently addressed what we are seeing as an epidemic in my home State of New Hampshire. The implications of prescribing opioids and ensuring that we take a very strong public health approach toward these pain relievers is important.

I know my that my colleagues—Senators MARKEY, MANCHIN, and BLUMENTHAL—have been on the floor previously to discuss the concerns they share about the FDA as well. I thank them for their leadership on this important issue.

I think what is important to understand here is what we are facing when it comes to heroin, the drug deaths that are occurring in my home State of New Hampshire, the connection between people who are misusing prescription opioids and then becoming addicted to heroin, and the deadly use of a drug called fentanyl, which is 50 times more powerful than heroin. When we bring this all together, we have a situation with opioid abuse which includes painkiller abuse, heroin use, fentanyl abuse, and it is killing people in New Hampshire and across this country.

Across this country, approximately 30,000 people died of heroin or prescription opioid overdoses in 2014. As we come to receive the 2015 numbers, unfortunately, if the experience is anything like my home State of New Hampshire, the numbers are going to be much larger than 30,000 because in New Hampshire, every corner of my State has been impacted by this.

I had the privilege of serving as attorney general before I came to the Senate, and I dealt with many drug issues as attorney general. In fact, I had a drug task force that reported to me. We dealt with the surge of methamphetamine, cocaine, and other illegal drugs that certainly have caused addiction and people to struggle with addiction. Obviously, alcohol is also something people struggle with when it is misused, but I have never seen anything like this.

I talk to my law enforcement officers and I talk to my first responders about what they are dealing with. In 2015, in New Hampshire, we had over 400 overdose deaths, and those 400 deaths were situations where there was a combination—many of them, hundreds of them—of heroin and/or fentanyl. And that was a dramatic increase over 2014.

In 2014, we had 320 deaths. And by the way, that is a 60-percent increase from the year before.

Unfortunately, this is not stopping. It is the single most important public health and safety issue facing the State of New Hampshire right now, but I know New Hampshire is not alone. Certainly working with my colleague ROB PORTMAN from Ohio, I know this is hitting Ohio. Working with SHELDON WHITEHOUSE from Rhode Island, I know this is hitting Rhode Island. AMY KLOBUCHAR from Minnesota—this is hitting so many different places in our country. That is why I know Senator MARKEY from Massachusetts is concerned about this and Senator MANCHIN from West Virginia, who was on the floor earlier. This is about our quality of life in this country and the ability for people to live full lives and about our public safety and about our children most of all.

The headline from the Union Leader over this weekend: "Fentanyl, other drugs suspected in three Manchester deaths." So we had three deaths in New Hampshire, in our largest city, within 24 hours, and those three deaths were from a combination of heroin and fentanyl. According to Assistant Fire Chief Daniel Goonan, in just 24 hours in Manchester, these overdoses claimed the lives of a 23-year-old man, a 29-year-old woman, and a 34-year-old man. That was in just a 24-hour period.

In fact, what our first responders are seeing—I did a ride-along with the Manchester fire department. I was there less than an hour. We went to an overdose, and I saw the firefighters and their emergency personnel bring someone back to life using CPR and Narcan. If we did not have that drug, the over 400 we had in New Hampshire—I can't even tell you what the numbers would be, because not only did I do a ride-along with the Manchester fire department, I did one with the police, too, and we went to two overdoses in an hour and a half, and I saw them bring those individuals back to life.

But lest we think this is something that happens on some other street or in some other neighborhood, I can assure you that this can happen to any family, and that is something we need to understand. That was really brought home for me from a wonderful family I met, Doug and Pam Griffin, who lost their beautiful daughter Courtney. They are wonderful people.

I think about what our first responders are facing. This same article I just talked about, over the weekend—unbelievable. Twice the fire department in Manchester revived a woman who was 4 months pregnant, working on her in front of her young children.

I will never forget the overdose I went to. The firefighters came into the room, and there was a young man on the ground. They administered the Narcan and brought him back. But do you know what was in the corner? A crib with a baby in it. The firefighter grabbed the baby and was bringing the

baby over. The father was lying on the ground.

So this is having a tremendous impact on not only those who are struggling with addiction but also their families and the children around them and the future generations.

In this article, the assistant fire chief from Manchester basically said: It is more deadly than we have ever seen.

So that is why I have been proud to work with my colleagues, proud to work with Senators WHITEHOUSE, PORTMAN, KLOBUCHAR, and so many others on the Comprehensive Addiction Recovery Act. I thank the members of the Judiciary Committee for voting that important piece of legislation out of the committee, and I look forward to us taking that up on the floor.

Right now pending on the floor, we have an important nomination for the FDA. That is why I come to the floor today, because if you look at what we are addressing here, we are concerned about heroin and fentanyl, but there is a very important connection for us to understand, unfortunately, and it is also why I have been such a strong supporter of prescription-monitoring programs. The opiates that are prescribed—SAMHSA has found that four out of five individuals who turned to heroin actually started with prescription opiates and misusing prescription opiates or overusing those and then transitioning to heroin because heroin is cheaper, unfortunately, on our streets.

So it is very important that we have the FDA engaging on this issue very aggressively with our medical community, that the FDA take a prominent role in ensuring that what they are saying is, this is the appropriate use of prescription opiates. In my humble opinion, the FDA needs to take a much more aggressive role than it has in recommending the appropriate uses and engaging the medical community and the pharmaceutical community, very importantly, on this discussion, this public health crisis we are facing.

We have come together as a body on this issue, and I think it is important that we have been working on this in a very bipartisan basis. But just to talk about the importance of the FDA and the leadership we need there, in 2013 we saw the FDA approve Zohydro—a powerful, pure hydrocodone drug—without an abuse-deterrent formulation, and an abuse-deterrent formulation is important so that it will be used for its intended purpose and not chopped up or otherwise abused. Yet the FDA approves Zohydro—this powerful, pure hydrocodone drug—without an abuse-deterrent formulation despite the fact that its own advisory committee voted against approving the drug by a vote of 11 to 2.

I see Senator MARKEY coming to the floor, and I appreciate his leadership on this. One of the things that I know have troubled Senator MARKEY, Senator MANCHIN, and me as well is that last year the FDA approved OxyContin

for use by children as young as 11, and when they did that, they did not have an advisory committee or use an advisory committee before taking that step.

So I would say that I certainly appreciate that I had the opportunity to sit down with Secretary Burwell on this issue and learn more about the FDA's action plan that it issued, but unfortunately I believe the agency has to go further than it is going. The example I would use is the issuance of the recommendations for the children as young as 11 with OxyContin, without an advisory committee on something so important, seems—to me, it just doesn't pass the commonsense test. So I would recommend to the FDA, let's make sure we have an advisory committee look at this issue carefully and then reissue a recommendation, because to me it seems important that we have that guidance and the careful, thoughtful approach of the advisory committee. Of course, what troubles me is we hope they would take the advisory committee's recommendations, unlike what happened with Zohydro, unfortunately.

So we need leadership right now in the FDA. I have concerns that we are not going to be in a position where we get the strongest leadership we can have. We have a nominee pending on the floor. These concerns are very important. I hope, if he is confirmed, he will be aggressive on this issue and that the FDA will take a stronger leadership role on opiates, understanding that they have a very important role when it comes to this public health concern.

Right now I am not satisfied with where we are. I believe there is so much more we need to do. That is actually why yesterday I voted to not go forward with this nomination, because I haven't heard this clear statement, I haven't heard what the leadership plans are on this issue.

While I appreciate some of the steps the Department of Health and Human Services has taken, those steps to me need to be very much strengthened. As I look at the FDA's action plan, it pledges to make the use of advisory committees more frequent, but it should require the use of advisory committees for all opioid pain relievers, not just when we decide we want to use it. This should be consistent, given that we unfortunately know that the data is there on the connection between misuse of opioid pain relievers and the connection to those who unfortunately then turn to heroin, with the deadly combination of fentanyl, which is killing people in this country.

Again, I wish to thank Senator MARKEY for his leadership on this issue. There isn't a place I go in my State where I don't hear from a mother, a father, a sister, a brother, a grandmother, a grandfather, a friend about someone who lost a loved one, lost someone they care about, because of heroin, opioids, fentanyl, the deadly combination that is killing people.

We have an opportunity, not only with the important work in the Comprehensive Addiction and Recovery Act to add more resources to address prevention, treatment, and support for our first responders but also the FDA has a very important role, and we need stronger leadership there and greater engagement of our medical community on the best prescribing practices for opioids. To me, this is an opportunity where I would like to see stronger leadership and I would like to hear a much more aggressive stance from this FDA.

Of all the issues we struggle with, the things we disagree on in this body—heroin, fentanyl, they don't care whether you are a Republican or a Democrat, I can assure my colleagues, or an Independent or a Libertarian because these drugs are taking everyone's lives. So as I think about all the issues we can come together on, this is one about our public health, about our public safety, about our quality of life, and it requires all of our leadership. There is nothing partisan about this.

I hope we will see stronger leadership from the FDA. I hope we as a body will build on what the Judiciary Committee did and bring to the floor the CARA bill that many of us have worked hard on and support each other's efforts to do all we can to end this public health crisis and ensure that none of us have to run into families of people in our State whom we represent who are losing people they love to heroin or fentanyl or misuse of opioid prescription drugs.

This is devastating. I know we can make a difference. This is something we can make a difference on in this body.

I thank the Chair.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Massachusetts.

MR. MARKEY. Mr. President, I want to follow on with the discussion that Senator AYOTTE from New Hampshire was bringing to the Senate floor. What she is saying is just so accurate in terms of the pervasive nature of this opioid-driven epidemic—pandemic—in the United States of America. It is time for us to come together in a bipartisan fashion to deal with what is now the great medical storm sweeping across this country.

There has been a quadrupling of opioid-related deaths in just the last 14 years in our country. This is something that has to be understood. I heard Senator AYOTTE mention it, but we can't say it enough: 80 percent of all people in the United States who die from heroin overdoses begin with prescription painkillers—opioids—that have been given to them by physicians. Let me say that again. Eighty percent of the people who die from heroin overdoses started on prescription pills. They got addicted to the prescription painkiller. It deals with the same receptors in the brain. It creates the same kind of need in the brain, and when people get addicted to prescription pain medicine, it

is ultimately a very short to a product which is much less expensive—heroin—on the streets of the United States.

This epidemic has to be dealt with and it has to be dealt with where it starts and it starts at the FDA. It starts at the Food and Drug Administration. It starts with the agency that approves these drugs for sale in the United States of America.

Yes, the FDA stands for Food and Drug Administration, but over the last 20 years it really stands for “Fostering Drug Addiction,” and it has to end. This is why the nomination right now of Dr. Robert Califf to be the new head of the FDA gives us an opportunity to talk about this issue, to talk about where it all starts, how it began, and what we are going to have to do in this body to reverse this trend, which last year led to the deaths of 30,000 people in our country. Again, I say to my colleagues that between 2000 and 2014, the heroin overdose death rate has quadrupled in the United States of America.

This is something that is recent. It is related to the FDA, and we have to now have an honest discussion about the role that agency is playing because we have become the “United States of Oxy.” We have become a nation of 5 percent of the world's population that consumes 80 percent of the prescription painkillers in the world.

This overprescribing, this consumption of Oxy and Percocet, down the line has led to this epidemic, this contagion that is killing people on a daily basis in our country who otherwise would never have even contemplated using heroin or using any of these other more dangerous drugs.

That is why we are here. That is why I am recommending a “no” vote on Dr. Robert Califf.

The FDA has a chance to change its policies. Thus far, it is saying it will not change its policies.

In 2012, health care providers wrote 259 million prescriptions for opioid painkillers. That is enough for every single adult in America to have a bottle of these pills in their medicine cabinet. We should understand as we talk about this that the molecular composition of OxyContin is very similar to heroin. In fact, Oxycodone is the sole ingredient in OxyContin. OxyContin stands for oxycodone continuously in the bloodstream of the patient who is taking these pills. It creates this sense that you are able to deal with the pain. It creates this sense that you are being taken care of, but if it is not handled correctly over time, it then creates an addiction, and that addiction then leads to, once you are off these pills, to being out on the street buying the heroin or buying the Oxy you need in order to continue this habit.

So we have to start to deal with the issue very realistically in terms of this pathway that has been created into the minds of millions of people all across this country.

Thirteen hundred people died in Massachusetts in 2014, of the 30,000 people

in our country, as a result of this issue. We have the FDA, going back to the year 1996, accepting the misrepresentation of the pharmaceutical company Purdue, which represented to the FDA that OxyContin, in its original formulation, was abuse deterrent, meaning that since it was time-released inside of the patient, that, therefore, it was abuse deterrent and it could be prescribed safely to people all across our country. Well, it turned out that not only was that a misrepresentation to the FDA, but Purdue Pharma subsequently was fined millions of dollars and its executives punished for the misrepresentation they made to the Food and Drug Administration.

That was a brief 20 years ago, but that is pretty much where it all started. That is the original sin—accepting this whole notion of abuse deterrent.

Let's go to the FDA in more recent times. In 2012, there was a new opioid that the FDA had to consider for approval. That new opioid's name is Zohydro. The FDA impaneled 13 experts to examine that drug for the FDA. When those 13 experts concluded their examination of the drug by an 11-to-2 vote, the expert advisory panel voted, no, do not allow this new Zohydro drug out on to the marketplace. They said the standards for abuse are too low. The standards to deal with addiction are too low. The standards to deal with a diversion of the drug are too low. What did the FDA do in 2012? It approved Zohydro for sale in the United States over the objections of the advisory panel that had voted 11 to 2 against it—and these are experts.

Moving forward, the FDA decided to reexamine what it was going to do. So when it was considering Targiniq, when it was considering Hysinla, it decided to solve the problem by having no expert advisory panels which it would convene to examine the impacts of that drug before it got approved. That is a good way to solve the problem—just accept the representations of the company that it had abuse deterrent in it, and then you don't have to worry because you will not have to talk to experts on the outside again. So those two drugs got approved.

Then, in August of 2015, there was an application by Purdue Pharma, once again—that company's name just keeps coming back into the equation—they wanted approval to sell OxyContin to children ages 11 to 16. Now mind you, the actual standards at the FDA require an outside expert panel to look at approval for opioids being sold in America if it is controversial, if it could have a huge social impact in our society. And it specifically says in the FDA's own guidelines that if pediatric doses—if the proper dose for a child is involved—then the FDA should have an expert panel. What did the FDA do? The FDA decided no expert panel would examine the appropriateness of OxyContin being prescribed for children ages 11 to 16 in our country—no

expert advisory panel, which brings us to the nomination of Dr. Robert Califf.

We are now in a process where we are examining his nomination and his qualifications. This Senator leaves aside his own personal qualifications. This is not a debate, really, over Dr. Califf. It is a debate over the agency because the agency is saying—even today as we will be voting on Dr. Califf's nomination—they will not change. They will not convene expert outside advisory panels to look at this new generation of opioids with abuse deterrents built into them to determine whether or not they are actually appropriately being put into our society.

Today is the day to begin this debate. This nomination is the occasion that we can use in order to debate what has gone wrong at the Food and Drug Administration. If we don't start with a brandnew definition that gets created for abuse, for addiction, for what the standards should be for the use of these opioids, then this issue is just going to escalate until we are losing a Vietnam war's number of people every single year in the United States.

This is a pharmaceutical industry-created problem. This is a physician-created problem. This is an FDA-created problem. It is created by men and women, and it can be solved by men and women. This is not Zika, this is not Ebola, and this is not some disease that you can't really point to that is responsible. This is us, this is our country, and this is our culture. We did it. We created this problem. We are 5 percent of the world's population consuming 80 percent of all opioids—crazy. Really, it is crazy.

We have to finally come to the recognition that this is no longer some inner city heroin epidemic. This disease knows no barrier—racial, income, geography, employment—no barriers at all. It is spread across every single segment of the American population, top to bottom. There is no discrimination whatsoever.

We have to decide what we are going to do in order to make sure that we put the proper safeguards in place. Senator MANCHIN and I, Senators AYOTTE, SANDERS, BLUMENTHAL, and others have been raising these questions. To the credit of the Senate Judiciary Committee, they are considering legislation to bring to the floor. I thank Senators WHITEHOUSE, PORTMAN, SHAHEEN, AYOTTE, and Senators GRASSLEY and LEAHY for their work on that legislation, but that legislation does not conclude anything on this issue that I am talking about right now. This has to be solved by the FDA.

That is why this Senator has put a hold on this nomination, saying that they will not get this nomination until they change their policies. We are in the eighth year of this administration, and the policies still remain in place.

Abuse deterrent is really a contradiction in terms. If you take these pills—you are a carpenter or an ironworker,

and you have a bad back—you start taking these OxyContin pills right now, and you take them as they are prescribed, and you keep going month after month after month. You are increasing the likelihood on a daily basis that you are going to become addicted to these pills.

We have heard these stories over and over again about the pathway in from family members. They come into the office and talk about the pathway in that their child, husband, or son took. It all starts with the same story. They were given the prescribed pills.

Right now the industry is saying: Don't worry; there is an abuse deterrent. Tell that to these family members. Tell that to the families who have lost their loved ones. The drugs are not abuse deterrent. It is a contradiction in terms, like jumbo shrimp. There is no such thing. You need to be realistic about what this drug represents once it is consumed over and over again by people in our country who think that because the doctor has given them a bottle of pills, that is going to help them. That is one of the stories we hear over and over again from family members.

They say that they question themselves. Could they have done more themselves to help their family member before they became addicted? The common theme from each of them is that you have to assume, when a doctor is giving you a bottle of pills for your family member, that it must be good for them. It must be good for them.

It turns out that for 30,000 people in 2014, it wasn't good for them. This number is going to continue to escalate because we haven't put tough enough standards on the books in order to deal with these issues. By refusing to convene expert advisory boards to come in and to create the guidance which is going to be needed in our country going forward, we are going to have a continued flood of opioid deaths that could have been stemmed if we had dealt with this issue in the proper fashion.

This is not a hypothetical concern. The policy announced last week by the FDA would not have guaranteed an advisory panel for OxyContin on the market today. The FDA must change its decision not to seek expert advice against the risk of addiction before it approves any and all opioids.

I want to tell a little story. It is a story about one of maybe the five greatest basketball players ever to come out of the State of Massachusetts. His name is Chris Herren. Chris became a Boston Celtic. He was the greatest basketball player in Fall River history, was drafted in the first round by the NBA, and went to the same college I went to—Boston College. In an excerpt of remarks he recently made in DC at the Unite to Face Addiction rally on the National Mall, here is what Chris Herren said:

I truly believe when it comes to prevention and educating our kids, we need to stop focusing on the worst days and start educating about the first day.

At 18 years old, on the campus of Boston College I was introduced to cocaine. I promised myself one time—just one line. That one line took me 14 years to walk away from.

Despite myself at 22, my dream came true. I was 33rd pick in the NBA draft, but that same year I was introduced to a little yellow pill—a 40 milligram OxyContin that cost a 20 dollar bill. That 40 milligrams turned into 1600 milligrams a day. And that 20 dollars became a \$20,000-a-month Oxy habit. And just 2 years later, that pill turned into a needle and that needle stayed in my arm for the next 8 years.

I often say if you can't find it in your heart to have empathy for someone who is battling their illness, then you must know that he or she has a mother, father, son or daughter that is at home with a broken heart that wants them back. Just one pill, lives impacted, some recover and many are lost.

Another story—Kaitlyn Oberle from Scituate, MA. Here is what she says:

I have survived a fatal opiate overdose, yet I never abused opiates.

On November 13, 2015 I spoke to my 27-year-old brother for the last time. Less than 30 minutes after our final conversation, he passed away from an opiate overdose.

He was only 16 years old when he first encountered the demon that consumed the better part of his adult life; sadly, that same demon ultimately killed him. Injuries from a dirt bike accident left him with two broken arms, a knee injury, and what felt like an unending supply of prescription opiate painkillers. After his bones mended, he was left with an untreated gaping open wound that would never fully heal itself: an opiate addiction.

During my brother's recovery he painted a picture for me of how easy it was for him as a high school teenager and student athlete to call his doctor and request refills for his pain pill prescriptions. When he no longer had injuries to substantiate a prescription, he turned to illegal forms of opiates in both pill and intravenous form. Unfortunately, the damage to his brain had been done.

There are many facets to what may cause someone to become addicted to opiates, and there are equally as many angles of attack before there is substantial progress to a viable solution. Mr. Senator, I am writing to you because I am a survivor. I've lived through my worst fear by knowing I can be a voice in helping prevent future deaths caused by opiate addiction.

As you convene to debate the fitness of Dr. Robert Califf's nomination for head of the Food and Drug Administration, please ask the Senate to reflect on his time as deputy commissioner.

As second in power at the FDA, he has had a chance to do something about these issues. It is time for a change in culture at that agency.

A third letter—final letter written by Stephen Jesi, from Malden, MA:

I am writing to you as a longtime Maldonian and a father of a 33-year-old daughter Stephenie who passed away on December 13, 2015 of a heroin overdose.

Stephenie overdosed on Thursday, two days prior to her death and was released by the hospital at 11:39 p.m. on to the streets. We've experienced this first hand many times. Thank God for Chief Campanello of the Gloucester Police Department who picked up the phone, talked to us, talked to Stephenie, and assisted us in every way he could to get her into treatment. Everybody

else just said sorry, there is nothing we can do.

I believe that our medical community along with the pharmaceutical industry are grooming and developing drug addicts and putting them right into the hands of the cartels and the drug dealers. Way too many prescriptions are written for more narcotics than are necessary after surgeries with no follow up. Many of those who are predisposed to addiction, either by genetics or co-existing mental health issues, are easy prey for these drugs that begin as legally prescribed. Once they are addicted and can no longer afford the medically prescribed version of the medication they fall into illegal drugs and from there too often the addiction has taken control of their lives.

The pharmaceutical industry along with our medical community has to prescribe these highly addictive narcotics much more carefully and offer less addictive medication whenever possible. Most patients take these narcotics for just a couple of days after the surgery but are provided a much longer supply where they can easily fall into the hands of the addict. Our legislators and government officials cannot be tied to the desires of the pharmaceutical lobbyists.

This is the cry that is coming out from every community in America. Individuals are saying: How did this happen to my family? How could that accident with the broken leg or the back pain turn into an opioid overdose? How could it have happened? Well, it happened because the medical community and the pharmaceutical industry have not put the protections in place for us to be able to deal with it.

Let me give you this number. This is a crazy number. It is a crazy number. Over the last 15, 20 years, there has been a dramatic increase in the number of prescription opioid pills that have been allowed to be sold in America.

So I am just going to ask people who are listening to this, pick a number. How many 10 milligram prescription opioids were allowed to be made in America last year? Just pick a number. We have 300 million people in America. How many of these pills were allowed or given the permission to be made by pharmaceutical companies? Here is the answer—14 billion. May I say that again—14 billion opioid pills for our country.

The numbers are out of control. The overprescribing is out of control. We have to find a way to dramatically reduce the amount of drugs that are being sold legally in our country. Before we even reach illegal, you have to start with legal. That is the problem because the Drug Enforcement Administration, the agency responsible for deciding how much each pharmaceutical company can manufacture each year, doesn't even announce how much each company is given permission to manufacture; instead they just announce the gross number of total opioid materials that can be put into pills in our country each year.

Does anyone understand this in America, that that is the process? The FDA allows the company to sell it. Then it goes over to the DEA. Then the DEA picks a number of pills that can be sold, and then physicians are al-

lowed to prescribe these pills, but this is the FDA's own number.

Listen to this. The FDA asks for voluntary guidelines to be put together for physicians' education so they know what they are doing with these opioids. Pick a number in your brain as to how many physicians have voluntarily accepted medical education on the consequences of prescribing opioids.

Pick a number. Here is the correct answer: 10 percent of physicians. That is it. On something that is so catastrophic, something that is creating an epidemic in our country, you would think this would be mandatory; that the medical associations at the State level, the national level had created some kind of mandatory education. It hasn't happened.

Is it mandatory in medical schools across America that they receive education as to what the consequences are of prescribing opioids? Not at all.

So who would think a physician would have to be trained in how to handle pain? I mean, a physician is only dealing with the issue all day long, every single day. You would think there would be some understanding then of what the consequences were of the medicines they were prescribing. No courses in medical school are mandated. No courses are mandated after you have graduated, you are practicing medicine, and now you are licensed by the DEA to prescribe opiates—no courses.

So as we move forward on the legislation that is going to be coming out on the floor of the Senate, I intend to make an amendment—Senator BLUMENTHAL and I tried to make it in the Judiciary Committee, and we are going to be making it on the Senate floor—requiring the Drug Enforcement Administration to require mandatory education for any physician who wants to prescribe these drugs. That is the minimum, the minimum that the medical profession should have to accept as a responsibility before they are allowed to prescribe these drugs.

There is another amendment which I am working on with Senator PAUL of Kentucky, and that is an amendment that is going to increase access to medication that can help people deal with their addictions. Again, that is a classic example of a Democrat and Republican working together on these issues. Senator AYOTTE and I have an amendment that would create a Good Samaritan protection for any American, any family member who wants to apply Narcan to a family member or someone who has overdosed and would die in the absence of Narcan, the antidote, being applied to them. Senator AYOTTE and I are working on that amendment.

We are trying hard to find ways where, unfortunately, legislatively we can act. This should have happened at the agencies. This should have happened in the medical profession. We shouldn't be forced to debate this on the Senate floor, but it is absolutely,

indispensably necessary for us to take this action.

This is the epidemic of our time. The death rates now in the age group that is affected by this epidemic are now declining at the same rates as they did during the war in Vietnam. We haven't seen anything like this since the war in Vietnam in the death rates—30,000 people—quadrupling in 14 years, escalating on a daily basis. It is time for the Senate to take real action on this issue so we can deal with it.

In Boston, MA, we had a police chief who saw that something had gone wrong, Chief Campanello. He said that incarceration doesn't work and instead treatment should be substituted. So beginning last June, what Chief Campanello said in Gloucester, MA, was that if you come in and you are an addict, you have a problem, you come into the police station, bring your drugs with you, we are not going to arrest you, we are going to put you into treatment immediately—no arrests. Four hundred people have walked into that police station in Gloucester, MA, in just 8 months—400 people. By shifting the paradigm from arrests to treatment, 800 more people—800 total across the country—as city after city, town after town adopts this model, have now accepted that as a better route for them in their lives, to just turn themselves in at the local police stations.

He has partnered with a man named John Rosenthal. John Rosenthal is an activist in our State, and he helps to fund this program. Last Wednesday night, tragically, John Rosenthal's own nephew, Nathan Huggins-Rosenthal, age 34, died of an overdose in Calgary, Canada. My heart goes out to the Rosenthal family because obviously they were committed to dealing with this issue, pioneering ways to have addicts be able to have a place they can go. Yet in John Rosenthal's own family, his nephew overdosed just last Wednesday night.

As Senator AYOTTE was saying, there is no neighborhood immunity. There is no family who is completely protected. This epidemic has been created by pharmaceutical companies, by physicians, by the agencies responsible to deal with it, and it is now time for us to put in place the protections which are needed to deal with it.

Let me give you opioids 101 so you can understand how we get to this—what are opioids, how do they work, and why do they lead to heroin abuse. Here is how it works. It starts with a seed pod of the opium poppy. We get the morphine, a naturally occurring opiate pain reliever from that pod seed. The morphine interacts with so-called opioid receptors that are found in high concentrations in areas of the brain that control pain and emotions. Taking opiates can increase the levels of dopamine in the brain's reward areas and produce euphoria or a rush of pain relief and relaxation. In fact, morphine, which was first identified in the early 1800s is named after Morpheus, the Greek god of dreams.

In 1895, the Bayer Corporation, Bayer Aspirin—the Bayer Corporation in Germany introduced a new cough suppressant marketed as a safer alternative to morphine. This new wonder drug was called heroin. In the 1920s, drug manufacturers began making fully synthetic analogs to morphine. They were called opioids. These drugs contain the same basic chemical framework as morphine, and they have exactly the same mechanism of action in the brain. They share common chemical features that allow them to buy into the brain's opioid receptors, and they all are considered highly addictive. These drugs vary widely in potency. That is the amount of the drug required to reach the same level of pain relief and sedation as morphine.

OxyContin, for example, is 150 percent as strong as morphine. Heroin is also an opioid. They share the same fundamental chemical structure. Heroin binds to the very same receptors in the brain and produces the same euphoria and sedation, and heroin is plagued by the same addiction potential. Heroin is classified as a schedule I drug, the most dangerous class, because it has no accepted medical use and a high potential for abuse and addiction.

So this is the pathway between opioids and heroin and why that pathway is very short. It is all about the chemistry because OxyContin has the nearly identical molecular constitution as heroin. Over time, the brain, the receptors are saying: I need to have to continue to have that hit. Thus, we have this epidemic where 80 percent of all people in the United States who are dying from heroin overdoses started on prescription opioid drugs that had been prescribed by their physicians. Physicians should have to be educated. The FDA should have expert advisory panels that give the strongest possible guidance to the pharmaceutical companies. That is what is missing in this equation. It starts there.

We need a debate on \$1.1 billion for more treatment and more education, and we are going to have that debate on the Senate floor. These local families, these local groups, they are heroes, but heroes need help, and it is time for us to fund those programs in the same way we funded the Ebola crisis and the same way we are being asked to help to fund the Zika crisis. We have a crisis in America ourselves, but if we don't deal with the issue right from the beginning at the FDA, at the DEA, and at the AMA, we are not going to solve this problem. We are just putting medical facilities in place to deal with the consequences of having no policy. This is our great opportunity to have a debate in our country.

I can't thank the Members enough for beginning to deal with this issue on a serious basis, but we can't be afraid of the pharmaceutical industry. We can't be afraid of the American Medical Association. We can't be afraid of the bureaucrats in these agencies who say: Oh, Mr. or Ms. Senator, we are the

experts. You don't know what you are talking about.

Well, just let me tell you this. The people of the United States don't trust the experts anymore in these agencies. They want more accountability. They want other experts to come in to check those experts, to ask the tough questions on behalf of the American people.

That is why I have a hold on Dr. Robert Califf's nomination for the FDA, because right now the FDA is saying it is going to continue business as usual and that is just wrong. That is just plain wrong. It has to stop there. The signal must come from this administration.

I thank all the Members for this discussion, for where we are today and where we are going to have to go in the months ahead, but I don't think we should end this year without a fundamental change that has taken place in our society in this relationship.

I will just add one final issue, and that is the issue of how many pills, how many pills a doctor can prescribe initially to a patient. We are now debating that issue in the State of Massachusetts. Governor Baker has been saying it should only be 3 days' worth of pills. One of the counterproposals is 7 days of pills that can be used by the patient.

I do know this. We have to start here because right now doctors are handing out bottles of 60 to patients who only need a week's worth or 3 days' worth. When you leave a dentist's office, you don't need 60 days' worth of pills for your wisdom teeth that have been removed. When you have some pain that you just got from playing a softball game and you have twisted your back, you don't need a bottle of 60 or 30. You might need a few pills for 3 days or 7 days, but you don't need the 60. Having that 60 in that medicine cabinet is the beginning of the problem.

I thank Governor Baker for what he is doing on this issue. They haven't resolved it in Massachusetts. I think we have to debate that in the Halls of Congress as well. They are all related, how these pills get into the blood system of our country.

Again, I thank all of the Members for their consideration of this issue.

Mr. President, I yield back the remainder of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SCOTT). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MORAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. MORAN. Mr. President, I ask unanimous consent that the Senate stand in recess as under the previous order.

There being no objection, the Senate, at 12:26 p.m., recessed until 2:15 p.m.